

Message Text

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DRAFTED BY EB/IFD/OMA:BGCROWE

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L/EB:PTRIMBLE

GC/LPC:KKAMMERER

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C O R R E C T E D C O P Y

E.O. 11652: N/A

TAGS: EFIN

SUBJECT: LEGAL RESTRICTIONS ON DEBT RESCHEDULING

REF: KINNELLY/CROWE TELEPHONE CONVERSATION OF 3 OCTOBER

PASS TO FRANK KINNELLY

1. THE AUTHORITY OF THE EXECUTIVE BRANCH TO RESCHEDULE DEBTS
CAN BE RESTRICTED BY THE LEGISLATIVE PROVISIONS UNDER
WHICH THE PARTICULAR CREDITS WERE ORIGINALLY EXTENDED AND
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THE FACTUAL CIRCUMSTANCES SURROUNDING THE RESCHEDULING. THE

EXECUTIVE BRANCH HAS NO SPECIFIC, OVERALL, STATUTORY AUTHORITY TO RESCHEDULE DEBT AND ITS CONSTITUTIONAL AUTHORITY IS EXTREMELY UNCLEAR.

2. THE FOLLOWING IS A SUMMARY OF THE LEGAL PROVISIONS WHICH RESTRICT EXECUTIVE BRANCH AUTHORITY FOR RESCHEDULING THE DEBT OF THE THREE MAJOR USG LENDING PROGRAMS:

-- THE LARGEST COMPONENT OF POST-WORLD WAR II DEBT OWED TO THE US RELATES TO LOANS EXTENDED UNDER THE FOREIGN ASSISTANCE ACT OF 1961 AS AMENDED. SECTION 620(R) OF THE ACT DIRECTS THAT NO RECIPIENT OF SUCH LOANS SHALL BE RELIEVED OF LIABILITY FOR THE REPAYMENT OF ANY PART OF THE PRINCIPAL OR INTEREST.

--IN THE CASE OF DOLLAR CREDIT LOANS MADE UNDER PUBLIC LAW 480, A DECEMBER 24, 1970 OPINION OF THE ATTORNEY GENERAL ON RESCHEDULING INDONESIAN DEBT STIPULATES THAT THE EXECUTIVE HAS THE AUTHORITY TO RENEGOTIATE ON TERMS OUTSIDE THOSE SPECIFICALLY AUTHORIZED BY PUBLIC LAW 480 IN SITUATIONS WHERE THE DEBTOR FACES IMMINENT DEFAULT AND RENEGOTIATION WILL MAXIMIZE REPAYMENT TO THE U.S.

--REGARDING LOANS BY THE EXPORT-IMPORT BANK, THE SAME ATTORNEY GENERAL'S OPINION STATES THAT SINCE THE BANK IS AUTHORIZED TO DO A "GENERAL BANKING BUSINESS" THE UNQUESTIONED ADMINISTRATIVE PRACTICE UNDER THE EXPORT-IMPORT BANK ACT HAS BEEN TO PERMIT RESCHEDULING AS THE BANK'S BUSINESS REQUIRES IN THE SAME MANNER AS A PRIVATE BANK.

3. SECTION 4 OF THE FOREIGN DISASTER ASSISTANCE ACT OF 1974 PROVIDES THAT THE SECRETARY OF STATE NOTIFY CONGRESS OF OUR INTENT TO ENTER INTO DISCUSSIONS WHICH COULD HAVE THE EFFECT OF LIBERALIZING THE REPAYMENT TERMS OF LOANS EXTENDED UNDER THE AUTHORITY OF THE FOREIGN ASSISTANCE ACT. THE DEPARTMENT MUST RESPOND TO REQUESTS BY CONGRESS FOR INFORMATION ON THE STATUS OF NEGOTIATIONS AND MUST FORWARD THE TEXT OF ANY BILATERAL DEBT RESCHEDULING AGREEMENT TO CONGRESS AT LEAST 30 DAYS BEFORE ITS ENTRY INTO FORCE.

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4. CONGRESS TAKES A DIM VIEW OF DEBT RELIEF, CONSIDERING IT AS A FORM OF "BACKDOOR FINANCING" WHICH PROVIDES AID WITHOUT CONGRESSIONAL APPROVAL. CONGRESSIONAL SENTIMENT HAS MOVED IN THE DIRECTION OF REDUCING THE FLEXIBILITY OF THE EXECUTIVE BRANCH TO DEAL WITH FOREIGN DEBT PROBLEMS AND

SEVERAL RESOLUTIONS TO THIS EFFECT HAVE BEEN INTRODUCED DURING THE 94TH CONGRESS. UNLESS DEBT RELIEF CAN BE CARE-

FULLY JUSTIFIED ON A CASE-BY-CASE BASIS, WE BELIEVE MORE
CONGRESSIONAL RESTRAINTS ARE LIKELY TO BE IMPOSED. THUS
AS FAR AS THE US IS CONCERNED, DEBT RELIEF IS NOT A METHOD
OF AVOIDING BUDGETARY APPROPRIATIONS. IF THIS WERE TO BE
ATTEMPTED IN THE US, (E.G. BY INCREASED USE OF DEBT RELIEF
AS A FORM OF AID) WE BELIEVE IT WOULD BE SELF-DEFEATING. KISSINGER

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